

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #4	CCRB Case #: 201905345	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/12/2019 6:15 PM	Location of Incident: 333 Rogers Avenue	Precinct: 71	18 Mo. SOL 12/12/2020	EO SOL 7/29/2021	
Date/Time CV Reported Tue, 06/18/2019 4:10 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/18/2019 4:10 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Elijah Boyle	01226	950096	071 PCT
2. POM Christophe Maccarone	08142	956054	071 PCT
3. POM Joseph Nicoletti	10711	961004	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Lafata	04931	935150	INT CIS
2. SGT Joseph Naranjo	04192	952045	071 PCT
3. POM Stephen Schmitt	12418	956245	113 DET
4. POM Eric Ruiz	24356	923086	071 PCT
5. POM Luis Lopez	27415	930590	071 PCT
6. POM Kevin Adair	15183	955706	INT CIS
7. SGT Martin Cunningham	02100	946888	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Nicoletti	Force: Police Officer Joseph Nicoletti used physical force against § 87(2)(b)	
B.DTS Elijah Boyle	Force: Detective Elijah Boyle used physical force against § 87(2)(b)	
C.POM Christophe Maccarone	Force: Police Officer Christophe Maccarone used physical force against § 87(2)(b)	
D.DTS Elijah Boyle	Force: Detective Elijah Boyle restricted § 87(2)(b)'s breathing.	
E.POM Christophe Maccarone	Force: Police Officer Christophe Maccarone restricted § 87(2)(b)'s breathing.	
F.POM Christophe Maccarone	Discourtesy: Police Officer Christophe Maccarone spoke discourteously to § 87(2)(b)	
G.DTS Elijah Boyle	Abuse: Detective Elijah Boyle improperly issued a summons to § 87(2)(b)	

Case Summary

On June 18, 2019, § 87(2)(b) filed this complaint with the CCRB via the online website (**01 Board Review**).

On June 12, 2019, at approximately 6:15 PM, § 87(2)(b) was walking alone in the vicinity of 333 Rogers Avenue in Brooklyn. Detective Elijah Boyle, Police Officer Christopher Maccarone, and Police Officer Joseph Nicoletti, all of the 71st Precinct, exited an NYPD vehicle and brought § 87(2)(b) to the ground (**Allegation A, Allegation B, Allegation C: force,** § 87(2)(g) Officers allegedly placed their knees on § 87(2)(b)'s back and restricted his breathing (**Allegation D: force,** § 87(2)(g) PO Maccarone spoke discourteously to § 87(2)(b) (**Allegation E: discourtesy,** § 87(2)(g) § 87(2)(b) was transported to the 71st Precinct stationhouse and Det. Boyle issued him a summons for disorderly conduct (**Allegation F: abuse of authority,** § 87(2)(g)).

This case was originally assigned to Investigator Sara Griffin and was reassigned to Supervising Investigator Tessa Yesselman upon Investigator Griffin's departure from the CCRB.

This case was marked sensitive because of media coverage (**18 Board Review**).

The CCRB obtained body worn camera (**06 Board Review, 07 Board Review**) and security camera footage of this incident (**02 Board Review**).

Findings and Recommendations

Allegation (A) Physical Force: Police Officer Joseph Nicoletti used physical force against

§ 87(2)(b)

Allegation (B) Physical Force: Detective Elijah Boyle used physical force against

§ 87(2)(b)

Allegation (C) Physical Force: Police Officer Christopher Maccarone used physical force against

§ 87(2)(b)

§ 87(2)(b) (**04 Board Review**) stated that he was walking home alone after playing basketball with two friends at a park on Sterling Street in Brooklyn. § 87(2)(b) was wearing red sweatpants, a red sweatshirt, and a brown backpack, and was carrying a basketball. § 87(2)(b) walked by a group of police officers in front of a building on Montgomery Street but did not have any interaction with them. Shortly after, § 87(2)(b) saw three unidentified officers running from the building on Montgomery Street, but did not know who they were running after or where they were going. § 87(2)(b) continued walking and when he reached the corner of Rogers Avenue and Montgomery Street he saw a marked police SUV. The driver of the SUV, identified by the CCRB as Det. Boyle, was staring at § 87(2)(b) kept walking. Det. Boyle turned the wrong way on to Rogers Avenue and drove up alongside § 87(2)(b). Det. Boyle, PO Maccarone, and PO Nicoletti exited the vehicle. Det. Boyle grabbed § 87(2)(b)'s left hand quickly and then let it go. § 87(2)(b) pulled his arm away from Det. Boyle after he released the arm. § 87(2)(b) was then lifted in the air by the officers and brought to the ground. The officers had not told § 87(2)(b) to stop or given him any other instructions.

PO Maccarone (**08 Board Review**) stated that he responded to a call for shots fired at § 87(2)(b) with PO Nicoletti. The call was regarding a group of teenagers on the roof of the building shooting. There was no description of any of the teenagers in the initial 911 call. When PO Maccarone responded to the location, there was a group of ten to fifteen teenagers exiting the building and they scattered when they saw him. PO Maccarone noticed § 87(2)(b) in the group

because § 87(2)(b) was wearing all red and carrying an MCM bookbag and PO Maccarone had previously received intelligence that MCM bookbags were used to transport firearms. PO Maccarone could not provide descriptions of any other members of the group. PO Maccarone and PO Nicoletti gave chase and pursued the teenagers on foot. Since the group scattered, the teenagers ran in different directions. PO Maccarone put a description out over the radio for a Black male wearing a red sweatshirt, red sweatpants, and an MCM bookbag. After canvassing for approximately five minutes, PO Maccarone and PO Nicoletti came across Det. Boyle, who was canvassing in a police vehicle. PO Maccarone and PO Nicoletti got into the vehicle with Det. Boyle. PO Maccarone saw § 87(2)(b) walking on Rogers Avenue towards § 87(2)(b). § 87(2)(b) matched the description that PO Maccarone had put over the radio and PO Maccarone recognized him as one of the teenagers who had run from § 87(2)(b). PO Maccarone told Det. Boyle that he saw § 87(2)(b). Det. Boyle drove up to § 87(2)(b) exited the vehicle, unlocked PO Maccarone's door, and approached § 87(2)(b). PO Maccarone could not hear if Det. Boyle and § 87(2)(b) said anything to each other. § 87(2)(b) pushed Det. Boyle in his chest. PO Maccarone and Det. Boyle held on to § 87(2)(b)'s arms and PO Nicoletti held on to § 87(2)(b)'s legs and they lifted him up and placed him on the ground in a "controlled takedown." PO Maccarone did this because § 87(2)(b) had pushed Det. Boyle and because a crowd of people was beginning to form around § 87(2)(b) and the officers. There was less than ten people in the crowd. PO Maccarone did not remember what the crowd was doing or if anyone in the crowd attempted to physically intervene in what the officers were doing.

Det. Boyle (**09 Board Review**) and PO Nicoletti (**10 Board Review**) provided statements largely consistent with PO Maccarone, except that PO Nicoletti did not testify to seeing § 87(2)(b) push Det. Boyle and Det. Boyle stated that § 87(2)(b) said, "Fuck off" as he approached him.

ICAD #§ 87(2)(b) (**20 Board Review**) shows that at on June 12, 2019, at 6:13 PM, a female called 911 and stated that there was a group of ten Black males on the roof of § 87(2)(b) in Brooklyn and two gunshots were fired.

The TRI that Det. Boyle prepared (**17 Board Review**) regarding this incident states that § 87(2)(b) pushed and shoved the officers and that the officers used a forcible takedown against § 87(2)(b). Det. Boyle stated (**09 Board Review**) that the pushing and shoving was in reference to § 87(2)(b) pushing him and dislodging his BWC.

§ 87(2)(b) independently went to § 87(2)(b) on § 87(2)(b) (**19 Board Review**). § 87(2)(b) complained of arm and leg pain after being tackled by police officers. § 87(2)(b) has a history of § 87(2)(b). § 87(2)(b) was discharged in good condition for care at home.

At 5:38 in PO Maccarone's BWC (**06 Board Review**), PO Maccarone is in the rear of Det. Boyle's video and says, "Stop, stop, stop." Det. Boyle exits the vehicle, opens PO Maccarone's door, and at 5:46, Det. Boyle is pictured interacting with § 87(2)(b) as PO Maccarone runs towards them. § 87(2)(b) is alone and no other civilians are visible. At 5:49, § 87(2)(b) is facing the camera and wearing a red sweatshirt, Det. Boyle is on the left side of the screen, PO Maccarone is facing § 87(2)(b) and PO Nicoletti is standing behind § 87(2)(b). At 5:59, § 87(2)(b) extends his arms towards Det. Boyle and an officer says, "Take him down and cuff him."

At 06:21:32 of the security camera footage (**02 Board Review**), Det. Boyle exits the marked police vehicle and then opens the rear passenger door. Det. Boyle runs up to § 87(2)(b) and appears to take him by his right arm. § 87(2)(b) is holding the ball in his hands. § 87(2)(b) turns away from Det. Boyle and then pulls his right hand away from him. PO Maccarone also runs over to § 87(2)(b).

§ 87(2)(b) and Det. Boyle. At the 06:21:35 minute mark, PO Nicoletti exits the SUV from the driver side rear passenger seat. § 87(2)(b) pulls away from Det. Boyle. At the 06:21:37 minute mark, PO Nicoletti positions himself behind § 87(2)(b). At the 06:21:43 minute mark, another plainclothes officer, Sgt. Lafata emerges from behind the vehicle. At the 06:21:42 minute mark, § 87(2)(b) makes a motion that is pulling away from the group of officers. There is some commotion between the officers and § 87(2)(b) but it is unclear what exactly is going on. At the 06:21:47 minute mark, § 87(2)(b) lifts his left arm up slightly as if he is trying to pull away from the officers. There is no crowd. At the 06:21:49 minute mark, PO2 lifts § 87(2)(b) by his legs, while Det. Boyle and PO Maccarone are holding § 87(2)(b) by his upper body and they place § 87(2)(b) on the ground.

Patrol Guide Procedure 221-02 states that an officer may use only the reasonable force necessary to gain control or custody of a subject (**13 Board Review**). The procedure also enumerates factors officers should consider when determining whether use of force is reasonable. The factors are as follows:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic

§ 87(2)(b), § 87(2)(g)

Allegation (D) Physical Force: Detective Elijah Boyle restricted § 87(2)(b) s breathing.
Allegation (E) Physical Force: Police Officer Christophe Maccarone restricted § 87(2)(b) s breathing.

§ 87(2)(b) (**04 Board Review**) stated that officers placed their knees on his back and face such that it restricted his breathing.

Video shows that Det. Boyle and PO Maccarone were the two officers positioned around § 87(2)(b) s face and back. Both Det. Boyle and PO Maccarone stated that they did not put their knees in § 87(2)(b) s back or face. PO Nicoletti and Sgt. Naranjo both stated that they did not see any officer put their knee in § 87(2)(b) s face or back.

At :22 of Sgt. Naranjo's BWC (**07 Board Review**), PO Nicoletti is pictured kneeling over § 87(2)(b) s legs. At :23, Det. Boyle is pictured with his knee on what appear to be blue boxer shorts

visible over § 87(2)(b)'s red pants. PO Maccarone is over § 87(2)(b)'s head. It is not visible exactly how he is positioned or if he is resting any body weight on § 87(2)(b). Also at :23 as Sgt. Naranjo moves closer, it is visible that PO Maccarone has one leg bent and up and his left arm blocks the exact position of his other leg. At :24 it is apparent that Det. Boyle's other leg is not on § 87(2)(b)'s back, because there is space visible between Det. Boyle's pant leg and § 87(2)(b)'s back.

§ 87(2)(b), § 87(2)(g)

Allegation (F) Discourtesy: Police Officer Christopher Maccarone spoke discourteously to

§ 87(2)(b)

(04 Board Review) did not allege that PO Maccarone spoke discourteously to him.

Footage from PO Maccarone's BWC captures PO Maccarone saying, "Get in the fucking car... Get in the fucking- get in, get in" to § 87(2)(b) at the 6:52 mark (06 Board Review).

After viewing his BWC, PO Maccarone (08 Board Review) stated that he did not specifically remember making the statement but thought that he made it because by that time a crowd had gathered and the crowd was loud and close to them and he said it in the heat of the moment of trying to get § 87(2)(b) in the car quickly, because the situation was happening quickly and had the potential to become dangerous for the officers and for § 87(2)(b).

According to Patrol Guide Procedure 203-10, officers are prohibited from using discourteous or disrespectful remarks (12 Board Review). Police Department v. Pichardo, DAO-DCT Case #201515012 states that officers may use limited profanity towards civilians to gain control of a dynamic situation (14 Board Review).

§ 87(2)(b), § 87(2)(g)

Allegation (G) Abuse of Authority: Detective Elijah Boyle improperly issued a summons to

§ 87(2)(b)

Det. Boyle issued § 87(2)(b) a summons for disorderly conduct, subsection one (03 Board Review). Det. Boyle stated that he chose the charge of disorderly conduct subsection one because § 87(2)(b)'s behavior caused a crowd to gather. § 87(2)(b) pushed Det. Boyle, causing Det. Boyle's BWC to fall off of his shirt and was immediately combative towards the officers, by telling Det. Boyle to, "Fuck off."

Security camera footage shows that the crowd did not form until after the officers brought § 87(2)(b) to the ground. At 6:21:28 the marked NYPD vehicle approaches § 87(2)(b). At 6:21:49 the officers bring § 87(2)(b) to the ground. At 6:21:56 an unknown civilian person is the first to start running towards the officers and § 87(2)(b) but they are intercepted by additional officers and do not reach the group (02 Board Review).

Section 240.20 subsection 1 of the New York State penal code (**16 Board Review**) states: “A person is guilty of disorderly conduct when, with intent to cause public inconvenience or alarm, or recklessly creating a risk thereof: 1) He engages in fighting or in violent, tumultuous or threatening behavior.”

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**15 Board Review**).
- PO Nicoletti has been a member of service for four years and has been a subject in three previous cases with ten allegations and one substantiation. PO Nicoletti is a subject in an additional open case, with five allegations.
 - In CCRB case 201900799 an allegation of failure to provide a Right to Know Act business card was substantiated against PO Nicoletti. The CCRB recommended command level instructions and the NYPD imposed instructions.
 - PO Nicoletti has four physical force allegations.
- PO Maccarone has been a member of service for six years and has been a subject in three previous cases with ten allegations and no substantiations.
 - PO Maccarone has two previous physical force allegations and one discourtesy allegation.
- Det. Boyle has been a member of service for nine years and has been a subject in eight previous cases with eleven allegations and one substantiation.
 - In CCRB case 201803645 an allegation of abuse of authority (frisk) was substantiated against Det. Boyle. The CCRB recommended formalized training and the NYPD imposed formalized training.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) § 87(2)(b)'s attorney, filed a Personal Injury Claim with the Office of the New York City Comptroller (**05 Board Review**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**11 Board Review**).

Squad No.: 4

Reviewer: _____

Signature Print Title & Name Date